

Wages; members of religious organization paid by the organization. The small remuneration paid by a religious organization, qualifying under section 501(c)(3) of the Code, to its members for services they performed pursuant to contracts between the organization and third parties constitutes 'wages' for purposes of the FICA and income tax withholding; the contract amounts paid to the organization are not includible in the members' gross income but constitute unrelated business taxable income to the organization.

Advice has been requested whether, under the circumstances described below, amounts received by members of a religious organization (not a religious order) for services performed are wages for purposes of the Federal Insurance Contributions Act and the Collection of Income Tax at Source on Wages (chapters 21 and 24, respectively, subtitle C, Internal Revenue Code of 1954) and are includible in their gross incomes. Advice is further requested whether the amounts received by the religious organization as remuneration for the members' services are taxable to the organization as unrelated business taxable income under section 511 of the Code.

As part of its activities, the organization contracted with several private forest owners to plant seedlings on cleared forest land. Under the contracts, the organization provides all the labor necessary to perform the work and provides supervisory services for the entire operation.

The laborers furnished are generally members of the organization, although if there are not sufficient members available to do the work, the organization furnishes other laborers. The members are neither permitted to select where their services will be used nor what duties they will perform. The entire remuneration for the planting operation is paid by the forest owners to the organization, which pays the members small amounts for the work they perform.

The organization has qualified for exemption from Federal income tax under section 501(c)(3) of the Code and has filed with the Internal Revenue Service an effective Form SS-15, Certificate Waiving Exemption from Taxes Under the Federal Insurance Contributions Act, together with an accompanying list of employees who concur in the filing, Form SS-15a. Therefore, the services of its employees are 'employment' unless otherwise excepted therefrom. See section 3121(b)(8)(B) of the Federal Insurance Contributions Act.

Section 3121(a) of the Federal Insurance Contributions Act provides, with certain exceptions not here material, that the term wages means all remuneration for employment. Section 3401(a) of the Code, relating to income tax withholding, provides, with certain exceptions not here material, that the

term wages means all remuneration for services performed by an employee for an employer.

Section 61 of the Code provides that gross income means all income from whatever source derived, including compensation for services.

Under the facts in the instant case the members of the religious organization are its employees and have no employer-employee relationship with the forest owners. Accordingly, for purposes of the Federal Insurance Contributions Act and the Collection of Income Tax at Source on Wages, the payments from the forest owners to the religious organization are not wages. However, the amounts paid by the organization to its members are wages for those purposes.

For Federal income tax purposes, the amounts received by the members from the organization are includible in gross income under section 61 of the Code.

Section 511 of the Code provides that the tax on unrelated business taxable income (as defined by section 512) shall apply in the case of any organization which is exempt from taxation under section 501(a).

Section 512(a)(1) of the Code provides that the term 'unrelated business taxable income' means the gross income derived by any organization from any unrelated trade or business (as defined in section 513) regularly carried on by it, less the deductions allowed that are directly connected with the carrying on of such trade or business.

Section 513 3f the Code provides that the term 'unrelated trade or business' means, in the case of any organization subject to the tax imposed by section 511, any trade or business the conduct of which is not substantially related (aside from the need of such organization for income or funds or the use it makes of the profits derived) to the exercise or performance by such organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under section 501.

Section 1.513-1(a) of the Income Tax Regulations provides that the gross income of an exempt organization subject to the tax imposed by section 511 is includible in the computation of unrelated business taxable income if: (2) it is income from trade or business; (2) such trade or business is regularly carried on by the organization; and (3) the conduct of such trade or business is not substantially related (other than through the production of funds) to the organization's performance of its exempt functions.

Section 1.513-1(d)(2) of the regulations provides that trade or business is 'related' to exempt purposes, in the relevant

sense, only where the conduct of the business activity has a causal relationship to the achievement of exempt purposes (other than for the production of income) and it is 'substantially related,' for purposes of section 513, only if the causal relationship is a substantial one. Also, where the production or distribution of the goods or the performance of the services does not contribute importantly to the accomplishment of the exempt purposes of an organization, the income, there from, does not derive from the conduct of related trade or business.

By entering into contracts with forest owners to plant tress, the organization is engaged in trade or business on a regular basis. Moreover, the conduct of this activity is not substantially related, aside from the need of the organization for income or funds, to the exercise or performance by the organization of its religious purposes.

The gross income derived by the religious organization through its contractual service arrangement with the forest owners is unrelated business taxable income within the meaning of section 512 of the Code. Accordingly, such income is subject to the tax imposed by section 511 of the Code.